

4. Plaintiffs filed a Request for Entry of Default against D & D Lumber on May 9, 2006.

5. On May 12, 2006, the Court denied Plaintiffs' Motion to Remand. The Court held that "D & D Lumber Company, Inc., doing business as Lockhart Lumber Company, is fraudulently joined, as it is uncontroverted that Defendant never controlled, operated, owned, or managed the site from which the allegations in this action arise." Order at ¶ 2.

6. Accordingly, the Court determined that there is no possibility that Plaintiffs can prove a cause of action against D & D Lumber.

7. This ruling is the law of the case. To the extent that the Court's May 12, 2006 Order did not already do so, D & D Lumber should be dismissed from this case.¹

WHEREFORE, D & D Lumber requests that the Court enter an Order:

- (1) Denying Plaintiffs' Request for Entry of Default; and
- (2) Dismissing D & D Lumber Company, Inc., doing business as Lockhart Lumber Company, Inc., with prejudice.

¹ There are many more additional grounds upon which this Court could appropriately dismiss D & D Lumber from this matter, one of which is Plaintiffs' failure to appropriately serve D & D Lumber with adequate process. However, given that this Court has already held that D & D Lumber is a fraudulently joined party (and thus cannot be liable for any of the conduct alleged in the Complaint), D & D Lumber believes that it is unnecessary to raise in detail such issues. To the extent that the Court would like further discussion relating to the factual basis of the defective nature of process and service of process upon it, D & D Lumber requests that the Court give it leave to brief same.

Respectfully Submitted,

s/ E. Bryan Nichols

H. Thomas Wells, Jr.

Bar Number: WEL004

twells@maynardcooper.com

John A. Earnhardt

Bar Number: EAR006

jearnhardt@maynardcooper.com

E. Bryan Nichols

Bar Number: NIC036

bnichols@maynardcooper.com

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.

1901 Sixth Avenue North

Suite 2400

Birmingham, Alabama 35203

Telephone: (205) 254-1000

Facsimile: (205) 254-1999

John C. Berghoff Jr

Mark R. Ter Molen

Matthew C. Sostrin

Admitted Pro Hac Vice

MAYER, BROWN, ROWE & MAW, LLP

71 S. Wacker Drive

Chicago, Illinois 60606

Attorneys for Defendant

D & D Lumber Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2006, I served the foregoing upon the following persons via U.S. Mail:

COUNSEL FOR DEFENDANTS LOUISIANA-PACIFIC CORPORATION

Dennis R. Bailey
R. Austin Huffaker
Rushton, Stakely, Johnston & Garrett
P. O. Box 270
Montgomery, AL 36101

COUNSEL FOR PLAINTIFF

W. Eason Mitchell
Colon Law Firm
P. O. Box 866
Columbus, MS 39703

Gregory A. Cade
W. Lee Gresham III
Fred R. DeLeon
Environmental Litigation Group
3529 Seventh Avenue South
Birmingham, AL 35222

s/ E. Bryan Nichols

E. Bryan Nichols
1901 Sixth Avenue North
Suite 2400
Birmingham, Alabama 35203
Telephone: (205) 254-1184
Facsimile: (205) 254-1999
E-mail: bnichols@maynardcooper.com
Bar Number: NIC036